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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29.06.2018

+ **Crl. Rev. P. No. 543/2018, Crl.M.B. No.1011/2018,**
Crl.M.A.No.11699/2018

RAJ KUMAR KUKREJA

..... Petitioner

Through

Ms.Neha Sharma &Mr.Mayank
Dawar, Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through

Mr.Kamal Kumar Ghei, APP
for State.Mr.Raunak Satpathy, Adv. for
R-2.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The Petitioner has preferred the present Criminal Revision Petition under Section 397 of the Code of Criminal Procedure *inter-alia* seeking quashing of an order dated 30.05.2018 passed by the Additional Sessions Judge, South-East District, Saket, New Delhi in Criminal Appeal no. 62 of 2018 upholding the judgment of conviction and sentence dated 04.05.2016 passed by the Metropolitan Magistrate, South-East District, Saket Court, New Delhi in Criminal Complaint no. 1215 of 2015 whereby the Petitioner has been convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo a Simple Imprisonment for a period of one year alongwith payment of Rs. 4,00,000/- to the Respondent No. 2 as compensation.

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2. The brief facts as emerge from the record are that the Respondent No. 2 (hereinafter referred to as the "Complainant"), filed a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act") in the Court of Metropolitan Magistrate, South-East District, Saket Court, New Delhi alleging therein that Petitioner-Accused had approached the Complainant for a friendly interest-free loan of Rs. 6,00,000/- and accordingly on his request, the Complainant loaned an interest-free loan of Rs. 6,00,000/- to the Petitioner-Accused. The Petitioner-Accused, with a view to discharge his liability, issued a cheque dated 06.08.2013 bearing no. '090459' for a sum of Rs. 3,00,000/- to the Respondent No. 2, drawn at Punjab National Bank, Defence Colony, New Delhi. However, upon presentation of the aforesaid cheque at ICICI Bank Ltd., Rohini, New Delhi by the Respondent No. 2, the same was dishonored on account of "*insufficient funds*" in the account of the Petitioner-Accused. Since the Petitioner-Accused failed to make the payment good despite opportunity having been afforded by the Complainant, by way of a legal notice dated 30.08.2013, he was compelled to initiate proceedings against the Petitioner under Section 138 of the Act, before the Metropolitan Magistrate, Saket Courts, New Delhi, which came to be registered as Criminal complaint no. 1215 of 2015.

3. It transpires that during the pendency of the proceedings before the learned Metropolitan Magistrate, the Petitioner and the Respondent No. 2 entered into a settlement on 08.10.2015 wherein the Petitioner-Accused undertook to pay the settlement amount of Rs.

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3,00,000/- to the Complainant in three equal installments and upon failure to pay the same, he would be liable to pay double the cheque amount of Rs. 6,00,000/-. Upon his failure to pay the settlement amount of Rs. 3,00,000/- to the Complainant, the learned Trial Court, on the basis of the evidence adduced on record by the respective parties, came to the conclusion that the present Petitioner-Accused is guilty of having committed the offence punishable under Section 138 of the Act, and accordingly convicted and sentenced him to undergo Simple Imprisonment for a period of one year along with a fine of Rs. 4,00,000/-.

4. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence passed by the learned Trial Court, the Petitioner-Accused filed an appeal under Section 374 of the Code of Criminal Procedure in the Court of Additional Session Judge, South-East District, New Delhi, which came to be registered as Criminal Appeal no. 62 of 2018, however fact remains that the same was dismissed, as a result of which, the judgment of conviction recorded by the learned Trial Court came to be upheld. In the aforesaid background, the present Petitioner-Accused approached this court by way of instant Criminal Revision Petition, praying for his acquittal after quashing and setting-aside the impugned judgments passed by the Courts below.

5. On 22.06.2018, this Court was informed by the learned counsel for the parties that the Petitioner and the Respondent No. 2 had arrived at a settlement. Today, during the proceedings of the case, learned counsel for the Petitioner has moved an application under

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Section 482 of the Code of Criminal Procedure, for compounding of the offence/case in question, which is taken on record and the Registry is directed to register the same. Learned Counsel for the parties, on instructions from their respective clients, who are present in Court, stated that parties have amicably settled the matter and in view of the compromise arrived *inter-se* the parties by virtue of Memorandum of Understanding dated 21.06.2018, entire compensation amount stands paid to the Complainant. The Registry is directed to number the aforesaid Application.

6. Mr. Raunak Satpathy, learned counsel, on instructions of Complainant namely Mr. Bharat Bhushan, categorically stated that the Complainant has no objection in case the conviction and sentence recorded by the learned Courts below are quashed and set-aside and the Petitioner-Accused is acquitted of charge framed against him. Learned counsel for the parties further stated that since parties have compromised the matter amicably and as such, instant matter may be ordered to be compounded in terms of the law laid down by the Hon'ble Apex Court in ***Damodar S. Prabha v. Sayed Babalal H. (2010) 5 SCC 663.***

7. A perusal of the averments contained in the application, clearly show that the parties have amicably settled the matter by virtue of Memorandum of Understanding dated 21.06.2018. Learned counsel for the Respondent No. 2 submits that he has no objection in case the instant matter is ordered to be compounded in terms of the judgment passed by the Hon'ble Apex Court in ***Damodar S. Prabhu*** case supra. The offence under Section 138 of the Act is compoundable as per

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Section 147 of the Act and consequently, this court sees no impediment in accepting the aforesaid prayer and subject to the Petitioner paying costs of Rs. 10,000/- to Delhi High Court Legal Services Committee, the compounding of the offence under section 138 of the Act is allowed. Accordingly, the judgments of conviction and sentence passed by the learned courts below are quashed and set-aside. The accused is acquitted of the charge so framed against him under Section 138 of the Act.

8. At this stage, learned counsel for the Petitioner prays that since the Petitioner has been in judicial custody since 30.05.2018, he may be released forthwith. Accordingly, it is directed that, subject to the Petitioner depositing the aforementioned costs to the Delhi High Court Legal Services Committee, he be released forthwith.

9. The petition is accordingly disposed of along with pending applications, if any.


REKHA PALLI
(VACATION JUDGE)

JUNE 29, 2018/gm